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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re the Marriage of LILI KHATAMI and ROBERT REZA MOZAFARI.	B262491 (Los Angeles County Super. Ct. No. BD511441)
LILI KHATAMI, Respondent, v. ROBERT REZA MOZAFARI, Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Patrick A. Cathcart, Judge. Affirmed in part; reversed in part.

Robert Reza Mozafari, in pro. per., for Appellant.

No appearance for Respondent.

INTRODUCTION

Robert Reza Mozafari appeals from a judgment of dissolution of his marriage to Lili Khatami, entered after a three-day court trial. He challenges the trial court's determination as to spousal support arrearages owed and the division of two Wells Fargo bank accounts and a TD Ameritrade account. We affirm in part and reverse in part.

FACTUAL AND PROCEDURAL BACKGROUND

Mozafari and Khatami were married on July 19, 1991, and separated on March 26, 2009. Khatami filed a petition for dissolution of marriage on August 27, 2009. Trial was held on October 23, 24 and 30, 2014, and the trial court then took the matter under submission. On December 12, 2014, the trial court issued a 21-page "Decision After Trial," explaining the bases for the judgment, and entered judgment.

In its decision, the court addressed the evidence presented at trial on Khatami's request for permanent spousal support and spousal support arrears. Finding that Khatami had been issued a *Gavron* warning[1] in 2009, could be self-supporting, and was evading a vocational examination, the court ruled that she was not entitled to further spousal support under Family Code section 4320.

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[1] *In re Marriage of Gavron* (1988) 203 Cal.App.3d 705, 711-712 requires that a party be advised that failure to take reasonable steps to become self-supporting may result in a modification or termination of spousal support; this advisement is known as a "*Gavron* warning."

As to spousal support arrearages, the trial court reviewed the spousal support orders from December 8, 2009 through 2014 and found the total amount owed to be $102,647. Based only on evidence of payments submitted by Khatami, the court concluded that Mozafari had paid $15,508 towards this amount, leaving an unpaid balance of $87,139.

With respect to the Wells Fargo checking and savings accounts, the trial court found that at the date of separation, the checking account contained $37,000 and the savings account $40,000. The court confirmed "one-half of these two accounts to each party as their separate property, o[r] $38,500 to each."

As to the TD Ameritrade joint account, the court found the parties presented evidence "that during or immediately after separation, [Khatami] withdrew $82,700 from the account. [Khatami's] testimony which the [c]ourt finds credible is that [Mozafari] directed her to withdraw the amount, in amounts less than $10,000, and put it into her own account, open a separate Ameritrade account, or put it into some other investment so that the money would not be available to creditors in [Mozafari's] bankruptcy action should he pursue bankruptcy. That money was spent on expenses and is now gone. There is no evidence to establish that the money was *not* spent on community expenses. The balance of the account as of the date of separation, according to [Mozafari's] Property Declaration (signed under penalty of perjury), was $34,000. The [c]ourt finds that the account contained community property and confirms one-half to each of the parties, or $17,000 each."

Mozafari filed a motion for new trial, claiming the trial court erred in issuing its decision and judgment without first issuing a tentative decision to which he had the opportunity to

respond. He challenged the award of spousal support arrearages, claiming that Khatami had testified she was only seeking arrearages for 11 months in 2011 and 2012, not prior years. He also argued the trial court failed to address evidence that Khatami emptied the Wells Fargo bank accounts after the parties' separation and erred in finding credible Khatami's testimony that she withdrew funds from the TD Ameritrade account at Mozafari's request. The trial court denied the new trial motion, but did grant the motion to correct clerical errors in the Decision After Trial.

DISCUSSION

On appeal, Mozafari challenges the denial of his new trial motion. It is reviewable on appeal from the underlying judgment. (*Sabbah v. Sabbah* (2007) 151 Cal.App.4th 818, 819, fn. 1.)

A. *Standard of Review*

The trial court ""is accorded a wide discretion in ruling on a motion for new trial and . . . the exercise of this discretion is given great deference on appeal . . . ."" (*Piscitelli v. Friedenberg* (2001) 87 Cal.App.4th 953, 969; accord, *City of Los Angeles v. Decker* (1977) 18 Cal.3d 860, 871-872.) "We will not disturb the trial court's determination of a motion for a new trial unless the court has abused its discretion." (*ABF Capital Corp. v. Berglass* (2005) 130 Cal.App.4th 825, 832; accord, *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 859.) In reviewing an order denying "a motion for a new trial, however, we must determine whether the court abused its discretion by examining the entire record and making an independent assessment of whether there

were grounds for granting the motion." (*ABF Capital Corp.*, at p. 32; accord, *City of Los Angeles*, at p. 872.) Discretion is abused where the trial court's action is arbitrary or capricious, or it exceeds the bounds of all reason under the circumstances. (*Maughan v. Google Technology, Inc.* (2006) 143 Cal.App.4th 1242, 1249-1250.) Discretion is also abused where there is no substantial evidence to support the trial court's findings of fact, so that "'considering all the evidence viewed most favorably in support of [the trial court's] order, no judge could reasonably make the order made.' [Citation.]" (*In re Marriage of Smith* (2015) 242 Cal.App.4th 529, 532; accord, *Kerner v. Superior Court* (2012) 206 Cal.App.4th 84, 110.)

B. *Failure To Issue a Tentative Decision*

In his new trial motion, Mozafari pointed out that the trial court failed to issue a tentative decision and give him time to respond, in violation of rule 3.1590 of the California Rules of Court. He also addressed his claimed errors in the decision after trial. He requested that the judgment be vacated, that the decision after trial be renamed a tentative decision, and that he be given an opportunity to respond. In the alternative, he requested that the decision and judgment be vacated, and that a new tentative decision and proposed judgment be issued, correcting the errors in the decision after trial and judgment.

The trial court denied the new trial motion "for reasons as stated on the record."[2] It did, however, grant Mozafari's motion to correct clerical errors in the decision after trial.

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[2] Mozafari did not provide us with a reporter's transcript of the hearing on his new trial motion.

Rule 3.1590, subdivision (a), of the California Rules of Court provides that "[o]n the trial of a question of fact by the court, the court must announce its tentative decision by an oral statement, entered in the minutes, or by a written statement filed with the clerk. Unless the announcement is made in open court in the presence of all parties that appeared at the trial, the clerk must immediately serve on all parties that appeared at the trial a copy of the minute entry or written tentative decision." Rule 3.1590 further provides for a party to request a statement of decision within 10 days after service of the tentative decision, preparation of a proposed statement of decision and proposed judgment, a process to raise objections, and a further hearing, if ordered by the court. (*Id*., subds. (d), (f), (g) & (k).)

Mozafari correctly points out that it was error for the trial court to enter judgment on the same day as it issued the decision after trial. (*In re Marriage of Steiner and Hosseini* (2004) 117 Cal.App.4th 519, 524.) However, as noted in *Steiner*, "'[w]hile a Rule of Court phrased in mandatory language is generally . . . binding on the courts . . . departure from it is not reversible error unless prejudice is shown.' [Citations.]" (*Ibid*.) We conclude Mozafari has not shown any prejudice here.

As we shall discuss, Mozafari has failed to demonstrate that the judgment contains factual or legal errors as to the division of the various accounts. As to those issues, he has not shown any prejudice from the trial court's error in failing to give him time to object to the decision after trial. (See *In re Marriage of Steiner and Hosseini*, *supra*, 117 Cal.App.4th at pp. 524-525.) Since we find that the court abused its discretion in discounting Mozafari's uncontroverted evidence of spousal support payments, and reverse as to the finding on arrears, Mozafari is not

prejudiced by the court's failure to provide a tentative statement of decision on that issue.

C. *Spousal Support Arrearages*

Mozafari contends that the trial court erred in calculating spousal support arrearages "based on a mistaken belief that [Khatami] asserted a claim for arrearages dating back to 2009." He claims that at trial Khatami only raised a claim for unpaid support for 11 months between September 2011 and August 2012, relinquishing any claim to unpaid support before or after that time frame. But even if the court were to calculate support arrears back to the initial order in 2009, he argues that the evidence shows he overpaid spousal support by $6,800 for the six-year period prior to trial.

At trial, the court spent a great deal of time eliciting and considering testimony from the parties regarding the amount of spousal support arrears due to Khatami. Under questioning, Khatami explained that she had applied for spousal support arrears numerous times. She offered evidence of prior spousal support orders made in the case, commencing as early as December 2, 2009. She complained that "a couple [of] months" after that first order, he stopped paying. After a subsequent modification on December 14, 2010, she testified that he sent "a check," but then when his employment was terminated, the payments stopped. She offered as exhibit 20 a declaration she had prepared showing payments he had made after he became reemployed, for the period between September 2011 through August 2012. She also offered as exhibit 21, copies of the actual support checks she received, and as exhibit 22, bank deposit records for the period January through August 2012, reflecting

the support checks she had deposited.[3] The discussion of arrearages on the first day of trial included the time period prior to 2011, although Khatami primarily focused on the period September 2011 through August 2012.

At the end of the first day of trial, the court clarified that it believed Khatami was seeking and entitled to a calculation of spousal support arrears from the first support order, or December 1, 2009. The court calculated the total amount of support owed, based on at least four different orders, to be $102,647. Under questioning from the court about exhibits 20 and 21, Khatami acknowledged that they only covered the period between September 2011 and August 2012, during which time she received a total of $15,508 in support. She never quantified the amount of payments she received outside of this period or the total amount she claimed was owed, despite several requests by the court.

Mozafari was then given an opportunity to present evidence of payments he had made. He presented testimony,

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[3] It is not clear from the record whether these three exhibits, or any of the exhibits offered in rebuttal by Mozafari to show payments, were formally introduced into evidence, as is not unusual with self-represented litigants unfamiliar with the formal rules of evidence. None of these exhibits were included in the record on appeal from the trial, although copies of certain of the exhibits apparently reviewed by the court were attached to Mozafari's new trial motion, which is part of the clerk's transcript. From the testimony elicited and the questioning of the court, however, it is evident the court reviewed and considered these exhibits after giving the parties full opportunity to object or respond. Given this posture, we too have considered these exhibits in reaching our decision in this case.

supported by tax returns and cancelled checks, reflecting that he had made payments of $102,497 from 2009 through 2013. He testified that he paid as spousal support $5,790 in 2009, $42,252 in 2010, $18,772 in 2011, $14,803 in 2012, $20,880 in 2013, and $6,950 through October 2014. He testified that he did not owe Khatami anything for 2009 or 2010 and that he most likely had overpaid her through October 2014, as his total payments were $109,447 as of trial.

Khatami did not refute this evidence. She repeatedly stated at trial that she had "no problem" with the payment history from 2009 through September 2011 when Mozafari became employed. The court received tax returns for 2009 and 2010, showing spousal support payments of $5,790 for 2009 and $42,252 for 2010, to which she did not object. When Khatami was shown tax returns and cancelled checks which Mozafari testified supported his spousal support payments for 2011 through October 2014, she acknowledged that she had deposited these checks and that they were consistent with the chart she had created (exhibit 20). She did not dispute Mozafari's overall figure for the support he had paid.

When a party challenges the sufficiency of the evidence to support a judgment, "we apply the substantial evidence standard of review. [Citations.] In applying this standard, we 'view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor . . . .' [Citation.]" (*Zagami, Inc. v. James A. Crone, Inc.* (2008) 160 Cal.App.4th 1083, 1096.)

Even viewing the evidence in the light most favorable to Khatami and resolving all conflict in her favor, the record does not support the trial court's finding that Mozafari owed spousal

support of $87,139. Khatami did not dispute Mozafari's testimony and supporting evidence in the form of tax returns and cancelled checks that he had paid $109,447 through October 2014. She agreed with the calculation of the amounts he had paid between September 2011 and August 2012. Her sole argument at trial was that Mozafari should have paid her more support than the existing support order for a short period of time because his earnings briefly increased. The trial court properly rejected this effort to retroactively modify support upward. (*In re Marriage of Gruen* (2011) 191 Cal.App.4th 627, 638-639.) On this record, there is no substantial evidence to support the court's ruling that Mozafari owed $87,139 in spousal support. On the contrary, substantial evidence indicates that Mozafari may have overpaid spousal support. We reverse the denial of the motion for new trial on the issue of calculation of spousal support arrears only.

D. *Wells Fargo Bank Accounts and TD Ameritrade Account*

Mozafari contends the trial court erred in failing to grant his motion for a new trial on the division of three accounts: two at Wells Fargo and one with TD Ameritrade. He also argues that the court committed error by failing to issue a court order as part of the judgment to unfreeze the TD Ameritrade account.

To the extent Mozafari claims that the record does not support the trial court's disposition of the Wells Fargo bank accounts and the TD Ameritrade account, he has failed to meet his burden of demonstrating error on appeal. In addressing a challenge to the judgment based on insufficient evidence, "[w]e must presume that the evidence supports the court's factual findings unless the appellant affirmatively demonstrates to the

contrary. [Citation.]" (*Bell v. H.F. Cox, Inc.* (2012) 209 Cal.App.4th 62, 80.) The appellant must set forth all the material evidence, both "'favorable and unfavorable, and show how and why it is insufficient.'" (*Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 738, italics omitted.) The appellant must also "faithfully recite the facts supporting the" judgment (*Brockey v. Moore* (2003) 107 Cal.App.4th 86, 96), supporting each factual reference with an appropriate citation to the record (Cal. Rules of Court, rule 8.204(a)(1)(C); *American Indian Model Schools v. Oakland Unified School Dist.* (2014) 227 Cal.App.4th 258, 284). Failure to accurately set forth the evidence in the record forfeits on appeal the challenge to the sufficiency of the evidence. (*Clark v. Superior Court* (2011) 196 Cal.App.4th 37, 52-53; *Brockey*, at p. 96.)

Mozafari fails to set forth the testimony regarding these accounts or show how it is insufficient to support the judgment. Moreover, to the extent he is claiming that the trial court should have believed him rather than Khatami, the claim is not well taken. We defer to the trial court's determination of credibility and do not reweigh the evidence. (*Schneer v. Llaurado* (2015) 242 Cal.App.4th 1276, 1285-1286.) Even if Mozafari were to demonstrate that inferences favorable to him are reasonable, we have no power to reject the contrary inferences drawn by the trial court, if they are reasonable as well. (*Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640, 1658.)

Khatami testified at trial that she removed the money from the TD Ameritrade account at Mozafari's request to evade his creditors and that she spent the money for post-separation community expenses, including paying for the mortgage on the marital residence, upkeep of the home and expenses related to

the many family pets. Such testimony was deemed more credible than any contrary evidence by Mozafari, a finding to which we must defer.

We also dispense with the argument that the trial court failed to apply the correct burden of proof in evaluating the evidence. While Khatami had the burden of proving what expenditures were made as she had sole control of the account after separation (*In re Marriage of Prentis-Margulis & Margulis* (2011) 198 Cal.App.4th 1252, 1271), Mozafari retained the ultimate burden of establishing that Khatami breached her fiduciary duty in handling this account. At trial, Khatami presented substantial evidence from which the court reasonably could have concluded the money had been spent on community expenses. The court did not improperly place any additional burden on Mozafari.

Mozafari's final claim on appeal, that the trial court failed to order the TD Ameritrade account unfrozen, is not the proper basis for an appeal. Requests for relief relating to enforcement of the judgment are properly directed to the trial court. They are not the basis for overturning a judgment or granting a new trial.

DISPOSITION

We reverse the judgment of the trial court on the issue of spousal support arrears only and remand this matter to the trial court for further proceedings to determine spousal support arrears in accordance with the views expressed in this opinion. Specifically, the court is to give due consideration to any proof of support payments made by Mozafari towards the $102,647, which

the court properly found to be the total amount owed for the period December 8, 2009 through 2014.

We affirm the judgment in all other respects. Mozafari is to bear his costs on appeal.

KEENY, J.*

We concur:

PERLUSS, P. J.

SEGAL, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.